



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC CASE NO. 26 OF 2014

MARGARET NANYAMA WANYAMA.....PLAINTIFF

VERSUS

VINCENT WEKESA BARASA DEFENDANT

R U L I N G

On 22nd November 2018, I made an order that the Deputy Registrar do sign transfer forms on behalf of the defendant to facilitate the transfer to the plaintiff of a portion measuring 0.375 acres from the land parcel **NO 124 SOY SAMBU SCHEME**.

The above order was made in accordance with the Judgment of the late **MUKUNYA J** dated 7th July 2015 in which the Judge had found in favour of the plaintiff.

An order was signed by the Deputy Registrar on 1st July 2019. However, it would appear from the letter by the **BUNGOMA COUNTY SURVEYOR** dated 10th December 2019 that the land parcel **NO BUNGOMA/SOYSAMBU/124** no longer exists having been sub – divided on 31st October 2011 to give rise to parcels **NO BUNGOMA/SOYSAMBU/1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885** and **1886** which have been registered and new titles issued. That therefore means that the Judgment by the late **MUKUNYA J** dated 7th July 2015 cannot be executed.

Faced with that reality, the plaintiff went to the registry and had this matter listed on 23rd January for directions. On that day, she had not served the defendant and so I adjourned the matter to 3rd February 2020 and directed that she serves the defendant.

On that day, and although the record does not reflect it, I realized that the plaintiff who is acting in person would have challenges in this matter. I therefore requested **MR BW'ONCHIRI ADVOCATE** who was present in a different matter, to take up this brief on the plaintiff's behalf pro – bono. Counsel readily agreed but when he sought the plaintiff's concurrence, she declined notwithstanding my several requests, together with counsel, to allow **MR BW'ONCHIRI** to assist her. Since the Court cannot force a litigant to accept pro – bono services, I allowed the plaintiff to proceed with her oral application before me which was very brief. She now wanted the Court to amend the Judgment of the late **MUKUNYA J** so that the portion of land to be transferred to her reads parcel **NO 1878 SOYSAMBU SCHEME** and not parcel **NO 124 SOYSAMBU SCHEME**.

It is clear that the order sought by plaintiff is not available to her because that is not what was decreed in the Judgment dated 7th February 2014.

The plaintiff's oral application made on 3rd February 2020 is therefore declined. There shall be no order as to costs.

Boaz N. Olao.

J U D G E

20th February 2020.

Ruling dated, delivered and signed in Open Court this 20th day of February 2020 at Bungoma.

Mr Kundu for defendant present

Plaintiff present

Joy/Okwaro – Court Assistants

Boaz N. Olao.

J U D G E

20th February 2020.